

1 This action was initially filed in state court and alleges three causes of action: Breach of
2 Contract for Underinsured Motorist Benefits; Common Law Bad Faith; and Statutory Bad Faith.
3 Plaintiff seeks punitive damages as to both bad faith claims.

4 Fewer than thirty (30) days after Defendant was served with this Complaint, Defendant
5 removed the lawsuit to this Court on the basis of diversity jurisdiction. Plaintiff now objects to
6 that removal and requests remand, arguing that Defendant has failed to show that the amount in
7 controversy in this case exceeds the jurisdiction minimum of more than \$75,000.00.

8 **II. DISCUSSION**

9 A civil action brought in a state court may be removed by the defendant to a federal
10 district court if the district court could have had original jurisdiction over the matter. 28 U.S.C. §
11 1441(a). But, “[i]f at any time before final judgment it appears that the district court lacks
12 subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). District courts
13 have subject matter jurisdiction over civil actions arising under federal law, *see* 28 U.S.C. §
14 1331, or where no plaintiff is a citizen of the same state as a defendant and the amount in
15 controversy exceeds \$75,000.00, *see* 28 U.S.C. § 1332(a).

16 Removal statutes are strictly construed against removal jurisdiction. *Gaus v. Miles*, 980
17 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt as to
18 the right of removal in the first instance.” *Id.* The defendant has the burden of establishing that
19 removal is proper. *Id.*

20 Plaintiff’s Complaint does not allege damages in excess of \$75,000.00 on its face.
21 Plaintiff merely alleges that he is entitled to his UIM benefits of \$15,000.00 and general
22 damages in excess of \$10,000.00 based on the harm Plaintiff allegedly suffered as a result of
23 Defendant withholding the UIM benefits. Plaintiff also alleges that he is entitled punitive
24 damages in excess of \$10,000 as to his bad faith claims. Defendant removed based on its
25 speculation that Plaintiff’s punitive damages could exceed \$50,000.00 and on the theory that

1 Plaintiff might demand his remaining \$48,000.00 in medical payments coverage under his
2 policy with Defendant. However, this second argument can be quickly disregarded, as
3 Plaintiff's complaint makes no mention of a demand for payment under the medical payments
4 aspect of his policy with Defendant; the Complaint appears to apply only to his UIM policy
5 limits.

6 Where it is not evident from the face of the Complaint that the amount in controversy
7 meets the jurisdictional threshold, the removing party must prove, by a preponderance of the
8 evidence, that the amount in controversy exceeds \$75,000.00. *See Sanchez v. Monumental Life*
9 *Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996). Defendant has not done so here.

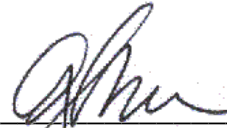
10 Defendant is not helped by its assertion that "the potential for punitive damages alone
11 exceeds the monetary jurisdictional amount of \$75,000.00" and its citation to *Woodward v.*
12 *Newcourt Commercial Financial Corporation*, 60 F. Supp. 2d 530, 532 (D. S.C. 1999) for the
13 proposition that the plaintiff's bar rarely seeks less than ten times damages and that juries
14 routinely award such punitive damages against corporations. (*See* Pet. For Removal 2:3-9, ECF
15 No. 1.) As this Court previously explained in a case dealing with the same Defendant and
16 nearly identical facts--the plaintiff was seeking her \$15,000.00 UIM policy limits, in excess of
17 \$10,000.00 in general damages, and punitive damages--to allow Defendant to point to what it
18 views as jurors' tendencies and the inclinations of plaintiff's attorneys would "limit the strict
19 construction requirement and remove the burden of proof from defendant." *Raschke v. Allstate*
20 *Property & Casualty Insurance Company*, No. 2:10-cv-02120-GMN-PAL, 2011 WL 86580, at
21 *2 (D. Nev. Jan. 10, 2011). Such speculation based on general tendencies is particularly inapt
22 when, as here, Plaintiff's counsel was in fact willing to resolve Plaintiff's claims for \$15,000.
23 (*See* Supplement, ECF No. 10.) Accordingly, this case will be remanded to state court.

24 CONCLUSION

25 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (ECF No. 4) is

1 **GRANTED.**

2 DATED this 7th day of July, 2011.

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6 Gloria M. Navarro
7 United States District Judge
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